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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Elizabeth Ann Russell

Serial No. 78/069,939

Elizabeth Ann Russell, pro se.

Michael E. Bodson, Trademark Examining Attorney, Law Office  
110 (Chris A. F. Pedersen, Managing Attorney).

Before Hanak, Hairston and Bucher, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Elizabeth Ann Russell has filed an application to  
register the mark shown below

**cajunz**

for "shirts and pants."<sup>1</sup>

<sup>1</sup> Serial No. 78/069,939, filed June 19, 2001, based upon  
applicant's allegation of a bona fide intention to use the mark  
in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to the identified goods, so resembles each of the following marks, which are registered to the same entity for "men's and women's clothing, namely shirts, pants, belts, ties, socks, underwear and hats," as to be likely to cause confusion, mistake or deception:

CAJUN CLOTHING CO. (typed drawing); and

CAJUN CLOTHING CO. and design as shown below.<sup>2</sup>



Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register in its entirety.

Our determination under Section 2(d) of the Trademark Act is based on an analysis of all of the probative facts

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<sup>2</sup> Registration Nos. 1,711,842 issued September 1, 1992; renewed and 1,703,435 issued July 28, 1992; renewed, respectively. In each registration, the phrase "CLOTHING CO." is disclaimed apart from the mark as shown.

in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. duPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.

Turning first to a consideration of the respective goods, applicant's clothing items are identical, in part, to the clothing items in the two cited registrations (shirts and pants) and are otherwise closely related to the other clothing items in the registrations.

Applicant argues that the goods are different because "[registrant] sells very sophisticated products compared to mine." (Brief, p. 5). The problem with this argument is that the question of likelihood of confusion must be determined on the basis of the goods as they are identified in the subject application and registrations, not on what the evidence shows the goods to be. See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Thus, for purposes of our analysis, we must assume that both applicant's and registrant's goods include clothing of varying levels of "sophistication." In other words, in analyzing likelihood

of confusion, we cannot draw the distinction urged by applicant.

For the same reasons, applicant's arguments as to the differences in its and registrant's channels of trade must fail. Both applicant's and registrant's goods must be deemed to be sold in the same channels of trade to the same classes of customers, which in this case would include retail outlets such as mass merchandisers and departments stores, where the purchasers would be the general public.

Turning then to the respective marks, we find that as applied to the involved clothing items, applicant's mark CAJUNZ in stylized lettering and the registered marks CAJUN CLOTHING CO. and CAJUN CLOTHING CO. and design convey substantially similar commercial impressions. In considering the marks, we recognize that the phrase CLOTHING CO. and the design of a crawfish in registrant's marks cannot be ignored. However, although we have resolved likelihood of confusion by a consideration of the marks in their entireties, there is nothing improper in giving more weight, for rational reasons, to a particular feature of a mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In the present case, we believe it appropriate to give greater weight to the word CAJUN in the registered marks given the highly

descriptive/generic nature of the disclaimed phrase CLOTHING CO. In addition, although the crawfish design in Registration No. 1,703,435 is a noticeable part of the mark, it is insufficient to distinguish this mark from applicant's mark. With respect to applicant's mark, while we recognize that it contains the final letter "Z," purchasers of shirts or pants while doing their clothing shopping could easily overlook this letter. Further, in finding that the marks are similar, we have kept in mind the normal fallibility of human memory over time and the fact that the average consumer retains a general rather than a specific impression of trademarks encountered in the marketplace.

One final argument made by applicant requires comment. Applicant contends that marks containing the word CAJUN are weak marks which are therefore entitled to only a limited scope of protection. In particular, applicant maintains that the word CAJUN is so highly used in marks that no one party may claim exclusive right to use the word. In support of its claim, applicant submitted copies of five third-party registrations for marks containing the word CAJUN. These registrations, however, are of limited probative value for the reason that they cover food seasonings, sauces and/or spices; not clothing items.

In view of the foregoing, we conclude that purchasers and prospective customers, familiar with either the registered mark CAJUN CLOTHING CO. or CAJUN CLOTHING CO. and design for men's and women's shirts, pants, belts, ties, socks, underwear and hats, would be likely to believe, upon encountering the similar mark CAJUNZ in stylized letters for identical and closely related clothing items, that such goods emanate from or are associated with or sponsored by the same source.

**Decision:** The refusal to register under Section 2(d) is affirmed as to both of the cited registrations.